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VIP PRODUCTS L.L.C.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

VIP PRODUCTS L.L.C.,
an Arizona limited liability company,
Plaintiff,
vs.
SNUGGLE PET PRODUCTS LLC,
a Michigan limited liability company,
Defendant.

Civil No.

**COMPLAINT FOR
TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION,
AND JURY DEMAND**

Plaintiff VIP PRODUCTS L.L.C. (hereinafter, "Plaintiff"), for its Complaint against Defendant Snuggle Pet Products LLC, doing business under the assumed business name "Smart Pet Love" (hereinafter, "Defendant"), states and alleges the following:

1. This is an action for trademark infringement and unfair competition under Federal and Arizona state law, and for false designation of origin, false or misleading description or representation of facts, and unfair competition under the Federal Trademark Act (15 U.S.C. § 1051 et seq.).

2. This court has jurisdiction over the subject matter of this civil action under 28 U.S.C. §1331 and 28 U.S.C. § 1338(a) and (b), and 15 U.S.C. §1121(a). Supplemental subject matter jurisdiction over the claim for unfair competition under Arizona law is provided by 28 U.S.C. §§1338(b) and 1367(a).

1 3. Venue in this judicial district is proper under 28 U.S.C. §1391(b) and (c).

2 4. Plaintiff VIP Products L.L.C. is an Arizona limited liability company
3 having a principal business address of 16515 S. 40th Street, Suite 121, Phoenix, Arizona
4 85048.

5 5. Upon information and belief, Defendant is a Michigan limited liability
6 company, and has a principal business address at 41180 Vincenti Ct., Novi, Michigan
7 48375.

8 6. Upon information and belief, Defendant does business under its corporate
9 name and under the assumed business name Smart Pet Love.

10 7. Upon information and belief, Defendant maintains an Internet web site
11 having the domain address www.smartpetlove.com.

12 8. Defendant offers a product line of “Happiness Products” for sale on its web
13 site at the web page having the domain address shown below:

14 <https://www.smartpetlove.com/product-category/happiness-category/?v=7516fd43adaa>

15 9. Each of the “Happiness Products” offered for sale on the above-described
16 “Happiness Products” web page is displayed with a price and a symbol of a shopping cart
17 for placing such item in the buyer’s online shopping cart.

18 10. After placing one or more items in the online shopping cart, a customer may
19 proceed to “checkout” to enter billing information and shipping information, and to make
20 an online payment for the products purchased.

21 11. This Court may properly assert personal jurisdiction over Defendant.

22
23 **Count 1 - Infringement of Plaintiff’s “MIGHTY” Trademark**

24 12. Plaintiff repeats and realleges Paragraphs 1-11 as if fully set forth herein.

25 13. Plaintiff manufactures and distributes products for pets, including dog toys.

26 14. Plaintiff is the owner of United States Trademark Registration No.
27 3,512,293, registered October 7, 2008 on the Principal Register, for the trademark

MIGHTY[®], in International Class 028, for pet toys.

15. A true copy of the Certificate of Registration for U.S. Trademark Reg. No. 3,512,293 is attached hereto as Exhibit 1.

16. On November 6, 2013, the Trademark Office issued a Notice of Acceptance And Acknowledgment of §§8 & 15 Declaration for U.S. Trademark Reg. No. 3,512,293.

17. Plaintiff's right to exclusive use of its MIGHTY[®] trademark for pet toys in commerce is incontestable within the meaning of 15 U.S.C. §1065.

18. Since at least 2007, Plaintiff has continuously used the trademark MIGHTY[®] in interstate commerce to identify pet toys originating with Plaintiff.

19. Plaintiff manufactures, markets, distributes and sells an extensive line of dog toys under its MIGHTY[®] trademark.

20. Each of the dog toys distributed by Plaintiff under its MIGHTY[®] trademark is shipped with a product tag secured thereto, and indicating that such trademark is federally registered; a true copy of one such product tag is attached hereto as Exhibit 2.

21. Defendant is making, distributing, offering to sell, and, upon information and belief, selling a line of dog toys called the "MIGHTY MIGHTS" series, shown at Defendant's Internet web page having the domain address shown below:

<https://www.smartpetlove.com/product-category/mighty-mights/?v=7516fd43adaa>

22. The image inserted below page was captured on December 14, 2017 from Defendant's Internet web page having the web address set forth in Paragraph 21 above:



23. As shown in the image above, Defendant has identified four of its dog toys as "Mighty Tiger", "Mighty Monkey", "Mighty Rabbit" and "Mighty Lion" (hereinafter,

“Defendant’s Mighty Toys”).

24. Defendant attaches packaging to Defendant’s Mighty Toys, including a header card and a tag.

25. In the image inserted to the right, which shows one of Defendant’s “Mighty Lion” dog toys, the header card extends above the lion’s head, and the tag is attached below the lion’s arm.

26. In the image inserted to the right, the header card bears the designation “Mighty Might”, while the “tag bears the word “MIGHTY” displayed in white capital block letters, resembling the format of the word “MIGHTY” on Plaintiff’s header card shown in attached Exhibit 2; the tag also includes the word “Mights” depicted less prominently when compared with the word “MIGHTY”.



27. Upon information and belief, Defendant has offered for sale, and sold, Defendant’s Mighty Toys in commerce, directly to consumers, and through distributors including Amazon.com, Chewy.com, and WholesalePet.com, for resale to consumers, within the District of Arizona and elsewhere.

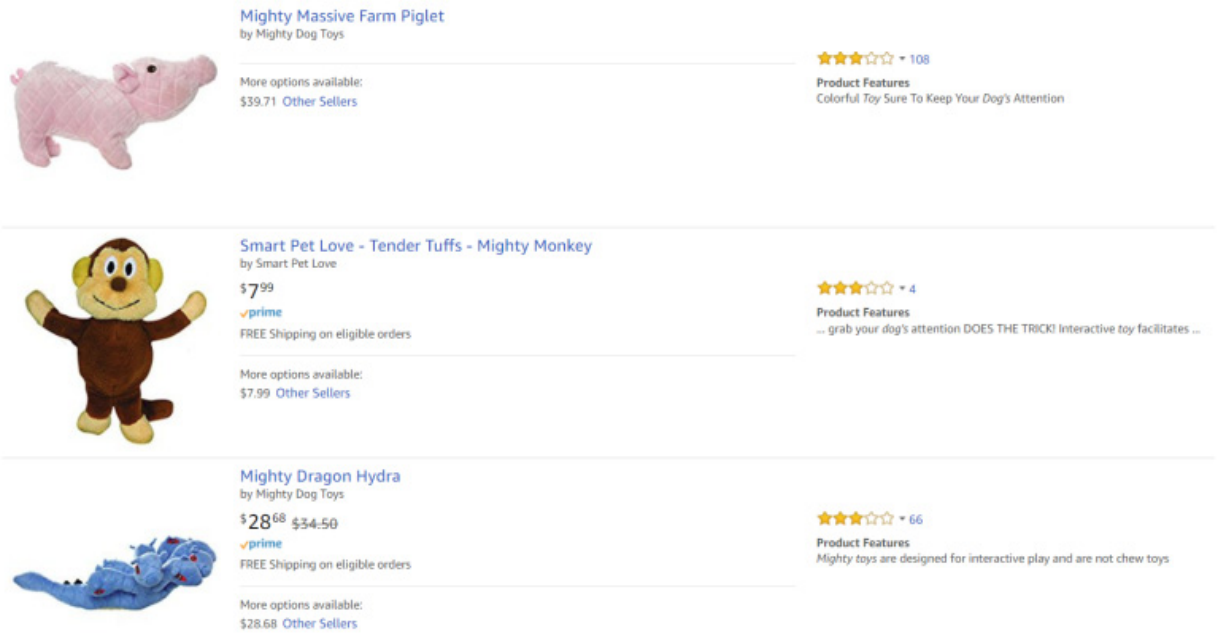
28. Plaintiff VIP also offers dog toys under its registered “MIGHTY” trademark, including dog toys in the form of a rabbit, a monkey, and a lion.

29. The designation “Mighty” used by Defendant to promote and sell Defendant’s Mighty Toys is confusingly similar to Plaintiff’s federally registered trademark MIGHTY® for pet toys.

30. Plaintiff and Defendant are competitors in the field of pet toys.

31. Plaintiff’s MIGHTY® dog toys, and Defendant’s Mighty Toys, are marketed and sold to the same class of consumers, including dog owners.

32. Defendant’s Mighty Toys are competitive goods relative to Plaintiff’s



MIGHTY® dog toys.

33. Plaintiff's MIGHTY® dog toys are offered for sale on Plaintiff's Internet web page having the web address shown below:
www.vipproducts.com/retail/files/index.php/categories/view/217/mighty-dog-toys.

34. Plaintiff's MIGHTY® dog toys are also offered for sale through Internet-based distributors, including Amazon.com.

35. As shown by the image inserted at the top of the following page, which shows a portion of the search results for a search conducted on the Amazon.com web site on December 14, 2017, using the key words "dog toys mighty", the second page of such results displayed one of Defendant's Mighty Toys (the "Mighty Monkey") right between two of Plaintiff's MIGHTY® dog toys (namely, Plaintiff's farm piglet and Plaintiff's dragon hydra):

36. Plaintiff's MIGHTY® dog toys and Defendant's Mighty Toys are marketed and sold through the same channels of trade.

37. Defendant's prominent use of the designation "Mighty" to promote and sell Defendant's Mighty Toys is likely to cause confusion, or to cause mistake, or to deceive,

1 the public into believing that Defendant's Mighty Toys originate with, are sponsored by,
2 or affiliated with Plaintiff.

3 38. Plaintiff has never licensed, agreed to, or otherwise consented to,
4 Defendant's use of the confusingly similar legend "Mighty" on dog toys.

5 39. Plaintiff's U.S. Trademark Registration No. 3,512,293 for the mark
6 MIGHTY® is prima facie evidence of the validity of the registered mark and of the
7 registration of the mark, of Plaintiff's ownership of the mark, and of Plaintiff's exclusive
8 right to use the registered mark in commerce on or in connection with pet toys; 15 U.S.C.
9 §1115.

10 40. Defendant's use in commerce, distribution, promotion, offering for sale, and
11 sale, of Defendant's Mighty Toys, in conjunction with the designation "Mighty", is an
12 infringement of Plaintiff's federally-registered trademark MIGHTY® for pet toys, in
13 violation of 15 U.S.C. §1114.

14 41. Defendant's use in commerce, distribution, promotion, offering for sale, and
15 sale of Defendant's Mighty Toys, in conjunction with the designation "Mighty", also
16 constitutes false designation of origin, false description, and unfair competition, in
17 violation of 15 U.S.C. § 1125(a).

18 42. The above-alleged acts by Defendant further constitute common law
19 trademark infringement and unfair competition under the established common law of the
20 State of Arizona.

21 43. Defendant's acts of false designation of origin, false descriptions, unfair
22 competition, and trademark infringement, in violation of §1114 and 15 U.S.C. § 1125(a),
23 and the common law of Arizona, have caused and will continue to cause damage and
24 irreparable harm to Plaintiff and are likely to continue unabated unless enjoined by this
25 Court. Plaintiff has no fully adequate remedy at law.

26
27 **Count 2 - Infringement of Plaintiff's "TUFFY" Trademark**

1 44. Plaintiff repeats and realleges Paragraphs 1-43 as if fully set forth herein.

2 45. Plaintiff is the owner, by assignment, of United States Trademark
3 Registration No. 1,558,243, registered September 26, 1989 on the Principal Register, for
4 the trademark TUFFY[®], in International Class 028, for pet toys.

5 46. A true copy of the Certificate of Registration for U.S. Trademark Reg. No.
6 1,558,243 is attached hereto as Exhibit 3.

7 47. Upon information and belief, Plaintiff's predecessor in interest began using
8 the mark TUFFY[®] on dog toys sold in interstate commerce in 1983.

9 48. Plaintiff acquired ownership by assignment of the trademark TUFFY[®] for
10 use on dog toys, including U.S. Trademark Reg. No. 1,558,243 and all common law
11 rights in the mark, on March 19, 2008, such assignment being recorded in the U.S. Patent
12 and Trademark Office on August 21, 2008.

13 49. Plaintiff renewed U.S. Trademark Reg. No. 1,558,243 with the U.S. Patent
14 and Trademark Office on September 26, 2009 under 15 U.S.C. §1059.

15 50. Plaintiff's right to exclusive use of its TUFFY[®] trademark for pet toys in
16 commerce is incontestable within the meaning of 15 U.S.C. §1065.

17 51. Since at least 2008, Plaintiff itself has continuously used the trademark
18 TUFFY[®] in interstate commerce to identify pet toys originating with Plaintiff.

19 52. Plaintiff manufactures, markets, distributes and sells an extensive line of
20 dog toys under its TUFFY[®] trademark.

21 53. Each of the dog toys distributed by Plaintiff under its TUFFY[®] trademark is
22 shipped with a product tag secured thereto, and indicating that such trademark is federally
23 registered; a true copy of such a product tag is attached hereto as Exhibit 4.

24 54. Defendant is making, distributing, offering to sell, and, upon information
25 and belief, selling a line of dog toys called the "Tender Tuffs" series (hereinafter,
26 "Defendant's Tender Tuff Toys").

27 55. Defendant's Tender Tuff Toys are being marketed by Defendant itself on its
28

web site at the web address www.smartpetlove.com/shop/?v=7516fd43adaa.

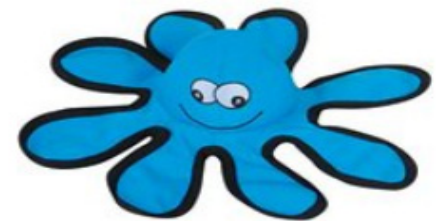
56. Defendant's Tender Tuff Toys and are also being marketed by Internet-based distributor Amazon.com; such products are displayed at the web address: www.amazon.com/s/ref=sr_in_-2_p_89_44?fs_t=as%3Aoff&rh=n%3A2619533011%2Cn%3A!2619534011%2Cn%3A2975312011%2Cn%3A2975413011%2Cp_89%3ASmart+Pet+Love&bbn=2975413011&ie=UTF8&qid=1513365687&rnid=2528832011.



Smart Pet Love - Tender Tuffs - Flying Duck - Tough Dog Toy - Play Fetch or Tug-of-war - Proprietary TearBlok Technology - Puncture Proof Squeaker
 ★★★★★ 8
 FREE Shipping on eligible orders and 1 more promotion
 \$14⁹⁹
 ✓prime
 In Stock

57. The image of the Tender Tuffs Flying Duck inserted to the right was captured on December 15, 2017 from the web address set forth immediately above.

58. Defendant's Tender Tuff Toys and are also being marketed by Internet-based distributor Chewy.com; such products are among those displayed at the web address: https://www.chewy.com/s?rh=c%3A288%2Cc%3A315%2Cbrand_facet%3ASmart+Pet+Love%2Cc%3A320



Smart Pet Love Tender Tuff Flying Blue Octopus Dog Toy
\$13.99
 ★★★★★ 2
 FREE 1-2 day shipping over \$49

59. The image of the Tender Tuff Flying Blue Octopus inserted to the right was captured on December 15, 2017 from the web address set forth immediately above.

60. Defendant's Tender Tuff Toys and are also being marketed by Internet-based distributor WholesalePet.com; such products are among those displayed at

the web address:

<https://wholesalepet.com/Search/Brand/4106>.

61. The image of the Tender Tuff Pterosaur inserted to the right was captured on December 15, 2017 from the web address set forth immediately above.



40142
Tender-Tuff Pterosaur »
Smart Pet Love »

62. Within its line of dog toys sold under its TUFFY® trademark, Plaintiff also sells a plush duck toy. Plaintiff's TUFFY® brand Dudley Duck is shown in the image inserted to the right.

63. Plaintiff's TUFFY® brand Dudley Duck is offered for sale on Plaintiff's web site

www.vipproducts.com/retail/files/index.php/.

64. Plaintiff's TUFFY® brand Dudley Duck is also offered for sale on the Amazon.com web site at the web address shown below:



www.amazon.com/Tuffy-Jr-Dudley-Duck-Dog/dp/B00DGJ8SCY/ref=sr_1_1?ie=UTF8&qid=1513369060&sr=8-1&keywords=vip%2Bdog%2Btoy%2Bduck&th=1

65. Plaintiff's TUFFY® brand Dudley Duck is also offered for sale on the WholesalePet.com web site at the web address <https://wholesalepet.com/Product/50441>.

66. Within its line of dog toys sold under its TUFFY® trademark, Plaintiff also sells a plush octopus toy. Plaintiff's TUFFY® brand Ocean Creatures Octopus is shown in the image inserted to the right.

67. Plaintiff's TUFFY® brand Ocean Creatures Octopus is offered for sale on Plaintiff's web site at the web address



<https://www.vipproducts.com/retail/files/index.php/categories/view/51/ocean-creatures/product:70>

68. Plaintiff's TUFFY® brand Ocean Creatures Octopus is also offered for sale on the Amazon.com web site at the web address shown below:
https://www.amazon.com/Tuffy-Ocean-Creature-Small-Octopus/dp/B000NVDEY0/ref=sr_1_1?s=pets-supplies&ie=UTF8&qid=1513370654&sr=1-1&keywords=vip+dog+toy+octopus

69. Plaintiff's TUFFY® brand Ocean Creatures Octopus is also offered for sale on the Chewy.com web site at the web address shown below:
<https://www.chewy.com/tuffys-ocean-creatures-lil-oscar-dog/dp/39256>

70. Plaintiff's TUFFY® brand Ocean Creatures Octopus is also offered for sale on the WholesalePet.com web site at the web address shown below:
<https://wholesalepet.com/Product/49469>

71. Within its line of dog toys sold under its TUFFY® trademark, Plaintiff also sells plush dinosaur toys. Plaintiff's TUFFY® brand Dinosaur Pteradactyl is shown in the image inserted to the right.



72. Plaintiff's TUFFY® brand Pteradactyl is offered for sale on Plaintiff's web site at the web address shown below:

www.vipproducts.com/retail/files/index.php/categories/view/119/dinosaurs/product:354

73. Plaintiff's TUFFY® brand Pteradactyl is also offered for sale on the Amazon.com web site at the web address shown below:
https://www.amazon.com/TUFFY-T-D-Tera-Tuffy-Dinosaur-Pteradactyl/dp/B000WFMCJ0/ref=sr_1_fkmr0_1?s=pets-supplies&ie=UTF8&qid=1513371976&sr=1-1-fkmr0&keywords=vip+dog+toy+pteradactyl

74. Plaintiff's TUFFY® brand Pteradactyl is also offered for sale on the Chewy.com web site at the web address shown below:

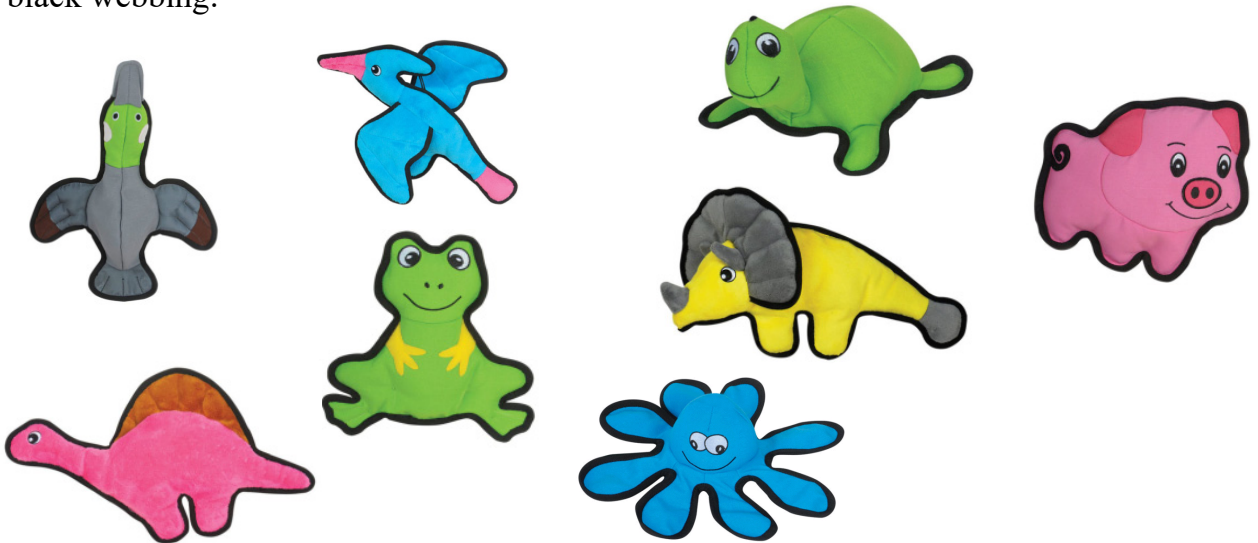
<https://www.chewy.com/tuffys-pterodactyl-dino-dog-toy/dp/39243>

75. Plaintiff's TUFFY® brand Pteradactyl is also offered for sale on the WholesalePet.com web site at the web address shown below:

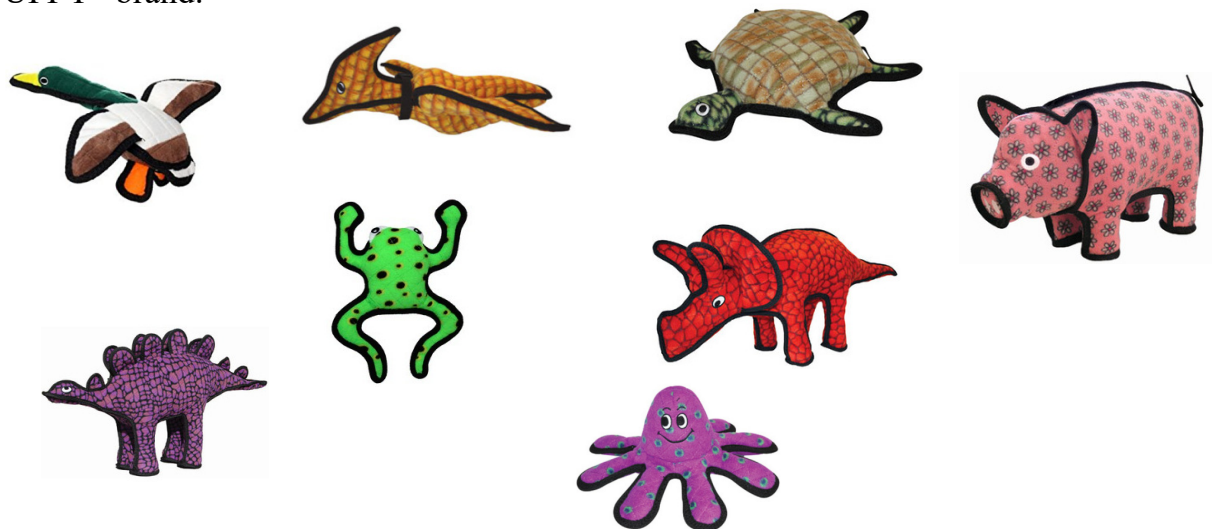
<https://wholesalepet.com/Product/8967>

76. Many of Defendant's Tender Tuff Toys includes a black band, or webbing, overlying outer seams of the toy.

77. Those of Defendant's Tender Tuff Toys shown below each includes such black webbing:



78. The black webbing shown above causes those of the Defendant's Tender Tuff Toys shown above to closely resemble similar dog toys sold under Plaintiff's TUFFY® brand:



1 79. Upon information and belief, Defendant has offered for sale, and sold,
2 Defendant's Tender Tuff Toys in commerce, directly to consumers, and through
3 distributors including Amazon.com, Chewy.com, and WholesalePet.com, for resale to
4 consumers, within the District of Arizona and elsewhere.

5 80. The designation "Tender Tuff" used by Defendant to promote and sell
6 Defendant's Tender Tuff Toys is confusingly similar to Plaintiff's federally registered
7 trademark TUFFY®.

8 81. Plaintiff and Defendant are competitors in the field of pet toys.

9 82. Plaintiff's TUFFY® dog toys, and Defendant's Tender Tuff Toys, are
10 marketed and sold to the same class of consumers, including dog owners.

11 83. Defendant's Tender Tuff Toys are competitive goods relative to Plaintiff's
12 TUFFY® brand dog toys.

13 84. Plaintiff's TUFFY® dog toys and Defendant's Tender Tuff Toys are
14 marketed and sold through the same channels of trade.

15 85. Defendant's prominent use of the designation "Tuff" and/or "Tender Tuff"
16 to promote and sell Defendant's Tender Tuff Toys is likely to cause confusion, or to cause
17 mistake, or to deceive, the public into believing that Defendant's Tender Tuff Toys
18 originate with, are sponsored by, or affiliated with Plaintiff.

19 86. Plaintiff has never licensed, agreed to, or otherwise consented to,
20 Defendant's use of the confusingly similar legend "Tuff" and/or "Tender Tuff" on dog
21 toys.

22 87. Plaintiff's U.S. Trademark Registration No. 1,558,243 for the mark TUFFY®
23 is prima facie evidence of the validity of the registered mark and of the registration of the
24 mark, of Plaintiff's ownership of the mark, and of Plaintiff's exclusive right to use the
25 registered mark in commerce on or in connection with pet toys; 15 U.S.C. §1115.

26 88. Defendant's use in commerce, distribution, promotion, offering for sale, and
27 sale of Defendant's Tender Tuff Toys, in conjunction with the designation "Tuff" and/or
28

1 “Tender Tuff”, also constitutes false designation of origin, false description, and unfair
2 competition, in violation of 15 U.S.C. § 1125(a).

3 89. Defendant’s use of similar trade dress, including black accent webbing, on
4 dog toys resembling dog toys sold by Plaintiff, and sold under a confusingly similar
5 trademark, also constitutes federal unfair competition, and false designation of origin, in
6 violation of 15 U.S.C. § 1125(a).

7 90. The above-alleged acts by Defendant further constitute common law
8 trademark infringement and unfair competition under the established common law of the
9 State of Arizona.

10 91. Defendant’s acts of false designation of origin, false descriptions, unfair
11 competition, and trademark infringement, in violation of §1114 and 15 U.S.C. § 1125(a),
12 and the common law of Arizona, have caused and will continue to cause damage and
13 irreparable harm to Plaintiff and are likely to continue unabated unless enjoined by this
14 Court. Plaintiff has no fully adequate remedy at law.

15
16 **WHEREFORE**, Plaintiff requests:

17 (1) That the Court preliminarily and permanently enjoin Defendant and its
18 employees, agents, representatives, successors, and assigns and all persons in active
19 concert or participation with them, from: (a) using Plaintiff’s trademarks “MIGHTY”,
20 “TUFFY”, the confusingly similar variations “Mighty Might”, “Tuff”, “Tender Tuff”,
21 “Tender Tuffs”, and/or any colorable imitations thereof, in conjunction with the
22 distribution, promotion, display, offering for sale and/or sale of pet toys, including dog
23 toys; and (b) otherwise unfairly competing with Plaintiff in the manner alleged herein; 15
24 U.S.C. §1116.

25 (2) That the Court order that all product labels, signs, prints, packages, wrappers,
26 receptacles, marketing materials, and advertisements in the possession of Defendant, and
27 bearing the legend “Mighty”, “Mighty Might”, “Tuff”, “Tender Tuff”, and/or “Tender
28

1 Tuffs”, and all plates, molds, matrices, and other means of making the same, to be
2 delivered up and destroyed; 15 U.S.C. §1118.

3 (3) That the Court order Defendant to pay to Plaintiff such damages sustained by
4 Plaintiff and to account for and pay to Plaintiff such profits realized by Defendant as the
5 law allows: (a) in consequence of Defendant’s acts of federal false designation of origin,
6 false descriptions, unfair competition, and trademark infringement; 15 U.S.C. §§1114,
7 1117, and (b) in consequence of Defendant’s acts of state trademark infringement and
8 unfair competition.

9 (4) That the Court find that the circumstances and actions of Defendant are
10 sufficient to merit an award of exemplary damages to Plaintiff in the amount of three times
11 the amount found as actual damages; 15 U.S.C. §1117.

12 (5) That the Court order Defendant to pay Plaintiff its costs and expenses related
13 to this action; 15 U.S.C. §1117.

14 (6) That the Court order Defendant to pay Plaintiff its attorneys’ fees related to
15 this action; 15 U.S.C. §1117.

16 (7) That the Court award such other and further relief as the Court deems
17 appropriate.

18
19 **JURY TRIAL DEMAND**

20 Plaintiff requests a trial by jury on all issues so triable in accord with Rule 38 of the
21 Federal Rules of Civil Procedure.

Respectfully submitted,

December 18, 2017

Date

By: /s/Marvin A. Glazer

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Attorneys for Plaintiff

VIP PRODUCTS L.L.C.

CERTIFICATE OF FILING/SERVICE

I HEREBY CERTIFY that on this 18 day of December, 2017, I electronically filed the foregoing COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND JURY DEMAND, including attached Exhibits 1-4, with the Clerk of the Court by using the CM/ECF system.

/s/Marvin A. Glazer

Attorney